

§ 780.312

(3) Is paid on a piece-rate basis.

(4) Is paid piece-rates in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment.

(5) Commutes daily from his permanent residence to the farm on which he is so employed.

(6) Has been employed in agriculture less than 13 weeks during the preceding calendar year.

(b) In order for the exemption to apply to an employee, all of the requirements must be met. Since a hand harvest laborer is normally an agricultural worker, while so engaged, such an employee would meet the basic requirements that he be employed in agriculture. Subpart B of this part contains a more detailed discussion of what constitutes employment in agriculture. The meaning and application of the remaining requirements are discussed in the following sections.

§ 780.312 "Hand harvest laborer" defined.

(a) The term hand harvest laborer for purposes of this exemption refers to farm workers engaged in harvesting by hand, or with hand tools, soil grown crops such as cotton, tobacco, grains, fruits, and vegetables. The term would not include harvesting operations performed by an employee with an electrically powered mechanical device, such as a "blueberry picking tool." "Hand-harvesting" refers only to soil-grown crops and does not include any operation involving animals, such as shearing or lambing of sheep and catching chickens. Hand-harvesting is defined as manually gathering or severing the crop from the soil, stems, or roots at its growing position in the fields. Included are integral related operations, closely related geographically and in point of time, which are performed before the transportation to concentration points on the farm.

For example:

(1) Employees who take tobacco leaves from the pickers and string them on poles by hand qualify as "hand harvest laborers" because the stringing operation is performed in the field almost simultaneously with the picking and before transportation to the concentration point on the farm (drying shed).

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(2) The picking up of tomatoes by hand after hand pulling from the vines is "hand-harvesting," as it is performed where the crop is severed and prior to its transportation to the packing shed.

(b) The definition is limited to harvesting, and the performance by the hand harvester of any nonharvesting operation in the same workweek would cause the loss of the section 13(a)(6)(C) exemption.

For example:

(1) Employees who wrap tomatoes in a packing shed would not qualify, as the wrapping is a nonharvesting operation. (*Schultz v. Durrence* (S.D. Ga.) 63 CCH. Lab. Cas. 32,387; 19 W.H. Cases 747.)

(2) Employees who hand pick small undesirable fruit prior to harvesting in order to insure a better crop would not qualify for the exemption. This is a preharvest culling operation performed as a part of the cultivation and growing operations not harvesting.

(3) Employees who chop cotton, since this is a nonharvesting operation.

§ 780.313 Piece rate basis.

The exemption provides that the employee must be paid on a piece-rate basis. To be exempt the employee must be compensated solely on piece rates during the workweek. The exemption does not apply in any workweek in which the employee is compensated on any other basis. For example, if an employee is compensated on an hourly rate for part of the week and on a piece rate for part of the week, the exemption would not be available. Also, if any pieceworker who is otherwise subject to the minimum wage provisions of the Act does not meet all the requirements set forth in this section he must be paid at least the minimum wage for each hour worked in a particular workweek, regardless of the fact he is paid on piece rate unless he is exempted by some other provision of the Act.

§ 780.314 Operations customarily * * * paid on a piece rate basis * * *.

A significant test of the exemption is that the hand harvest operation "has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment." The legislative history is silent on who must customarily and generally recognize the hand harvest